

111TH CONGRESS
1ST SESSION

H. R. 1202

To require a report on business and investment climates in foreign countries,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2009

Mr. SHERMAN (for himself and Mr. ROYCE) introduced the following bill;
which was referred to the Committee on Foreign Affairs

A BILL

To require a report on business and investment climates
in foreign countries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ANNUAL COUNTRY REPORTS ON BUSINESS AND**
4 **INVESTMENT CLIMATES.**

5 (a) ANNUAL COUNTRY REPORTS ON BUSINESS AND
6 INVESTMENT CLIMATES.—Not later than September 1 of
7 each year, the Secretary of State, in consultation with the
8 Assistant Secretary of State for Economic, Energy and
9 Business Affairs, as well as the Assistant Secretary of
10 Commerce for Trade Promotion and the Director General

1 of the Foreign Commercial Service, shall submit to the
2 Committee on Foreign Affairs of the House of Representa-
3 tives and the Committee on Foreign Relations of the Sen-
4 ate a report providing—

5 (1) detailed assessments with respect to each
6 foreign country—

7 (A) in which acts of unfair business and
8 investment practices or other acts that have re-
9 sulted in poor business and investment climates
10 were, in the opinion of the Secretary, of major
11 significance; and

12 (B) which the Secretary determines should
13 be the subject of such a report;

14 (2) all relevant information about such unfair
15 business and investment practices or other actions
16 during the preceding year by members of the busi-
17 ness community, the judiciary, and the government
18 of such country which may have impeded United
19 States business or investment in such country, in-
20 cluding the capacity for United States citizens to op-
21 erate their businesses without fear of reprisals; and

22 (3) with respect to each foreign country from
23 which the United States Government has sought co-
24 operation to assemble the annual country-specific in-
25 vestment climate reports required under this section

1 and address issues of unfair business and investment
2 practices, information on—

3 (A) the extent to which the government of
4 each such foreign country is working to prevent
5 unfair business and investment practices; and

6 (B) the extent of United States Govern-
7 ment action to prevent unfair business and in-
8 vestment practices or other actions that harm
9 United States business or investment interests
10 in relevant cases.

11 (b) PROVISIONS TO BE INCLUDED IN THE RE-
12 PORT.—The report under subsection (a) should, to the ex-
13 tent feasible, include—

14 (1) with respect to paragraph (1)(A) of such
15 subsection—

16 (A) a review of the efforts undertaken by
17 foreign countries to promote a healthy business
18 and investment climate that is also conducive to
19 the United States business community and
20 United States investors, including, as appro-
21 priate, steps taken in international fora;

22 (B) the response of the judicial and local
23 arbitration systems of each foreign country that
24 is the subject of such report with respect to
25 matters relating to the business and investment

1 climates affecting United States citizens and
2 entities, or that have, in the opinion of the Sec-
3 retary, and in consultation with the Director
4 General of the Foreign Commercial Service, a
5 significant impact on United States business
6 and investment efforts; and

7 (C) each foreign country's access to the
8 United States market;

9 (2) with respect to paragraph (2) of such sub-
10 section, any—

11 (A) actions undertaken by governments of
12 foreign countries that prevent United States
13 citizens and businesses from receiving equitable
14 treatment;

15 (B) actions taken by private businesses
16 and citizens of foreign countries against mem-
17 bers of the United States business community
18 and United States investors;

19 (C) unfair decisions rendered by the legal
20 systems of foreign countries that clearly benefit
21 State and local corporations and industries; and

22 (D) unfair decisions rendered by local arbi-
23 tration panels of foreign countries that do not
24 exemplify objectivity and do not provide an eq-

1 uitable ground for United States citizens and
2 businesses to address their disputes; and

3 (3) with respect to paragraph (3)(A) of such
4 subsection, actions taken by the United States Gov-
5 ernment to—

6 (A) promote the rule of law, in general;

7 (B) prevent discriminatory treatment of
8 United States citizens and businesses engaged
9 in business or investment activities;

10 (C) allow United States goods to enter for-
11 eign countries without requiring a co-production
12 agreement; and

13 (D) protect United States intellectual
14 property rights.

15 (c) PREPARATION OF REPORTS REGARDING BUSI-
16 NESS AND INVESTMENT CLIMATES.—

17 (1) STANDARDS AND INVESTIGATIONS.—The
18 Secretary of State shall ensure that the United
19 States diplomatic and consular missions abroad
20 maintain a consistent reporting standard and thor-
21 oughly investigate reports of unfair business and in-
22 vestment practices or any other actions that impede
23 a strong business or investment climate in the coun-
24 tries in which such missions are located.

1 (2) UPDATING INFORMATION BASED ON FOR-
2 EIGN COUNTRY MEDIA.—In compiling data and as-
3 sessing the business and investment climates abroad
4 for each report required under subsection (a),
5 United States foreign service officers shall, as appro-
6 priate and with respect to the foreign country in
7 which such officers are posted, research such coun-
8 try’s media sources, including newspaper, radio, and
9 television, to document any cases with evidence of
10 unfair business or investment practices or any occur-
11 rences that may destabilize the business or invest-
12 ment climate in such country.

13 (3) CONTACTS WITH BUSINESS LEADERS.—In
14 compiling data and assessing the business and in-
15 vestment climates abroad for each report required
16 under subsection (a), United States foreign service
17 officers shall, as appropriate and with respect to the
18 foreign country in which such officers are posted,
19 seek out and maintain contacts with corporate lead-
20 ers in all sectors of the market of such country to
21 discuss issues of foreign direct investment and the
22 challenges United States citizens or businesses may
23 face in making investments or earning returns on in-
24 vestments.

1 (4) CONTACTS WITH UNION LEADERS.—In com-
2 piling data and assessing the business and invest-
3 ment climates abroad for each report required under
4 subsection (a), United States foreign service officers
5 shall, as appropriate and with respect to the foreign
6 country in which such officers are posted, seek out
7 and maintain contacts with leaders of local and na-
8 tional unions of such country to assess the political
9 stability of such country as measured through social
10 cohesion and the rights of workers.

11 (5) CONTACTS WITH THE JUDICIARY.—In com-
12 piling data and assessing the business and invest-
13 ment climates abroad for each report required under
14 subsection (a), United States foreign service officers
15 shall, as appropriate and with respect to the foreign
16 country in which such officers are posted, seek out
17 and maintain contacts with members of the judicial
18 system of such country to evaluate the capacity of
19 the legal institutions to address discrepancies and
20 disputes that may arise, including corruption and
21 nationalization. Such officers shall also research the
22 capacity for arbitration locally to address concerns if
23 such country's legal system is unable to provide suit-
24 able or satisfactory recourse in a matter relating to

1 an unfair business or investment practice involving
2 a United States citizen or business.

3 (6) CONTACTS WITH NONGOVERNMENTAL OR-
4 GANIZATIONS.—In compiling data and assessing the
5 business and investment climates abroad for each re-
6 port required under subsection (a), United States
7 foreign service officers shall, as appropriate and with
8 respect to the foreign country in which such officers
9 are posted, seek out and maintain contacts with
10 members of nongovernmental organizations in such
11 country that address the concerns of the business
12 community, with the consent of such organizations,
13 including receiving reports and updates from such
14 organizations and, when appropriate, investigating
15 such reports.

16 (d) CLASSIFICATION OF REPORT.—

17 (1) IN GENERAL.—A report required under sub-
18 section (a) of this section shall, to the extent prac-
19 ticable, be submitted in an unclassified form but
20 may be accompanied by a classified appendix if the
21 Secretary of State determines that such is appro-
22 priate.

23 (2) COOPERATION.—If the Secretary of State
24 determines that the submission of any information
25 with respect to a foreign country under paragraph

1 (3) of subsection (a) in classified form would make
2 more likely the cooperation of the government of
3 such foreign country, the Secretary may submit such
4 information in classified form.

5 (3) SUMMARIZATION.—If the Secretary of State
6 determines that it is in the national security inter-
7 ests of the United States or is necessary for the
8 safety of individuals or entities to be identified in a
9 report required under subsection (a) or is necessary
10 to further the purposes of this Act, any information
11 required under such subsection, including measures
12 taken by the United States, may be summarized in
13 such report and submitted in more detail in a classi-
14 fied addendum.

15 **SEC. 2. BUSINESS AND INVESTMENT CLIMATE WARNINGS.**

16 (a) IN GENERAL.—The Secretary of State, with the
17 assistance of the Assistant Secretary of State for Eco-
18 nomic, Energy and Business Affairs, as well as the Assist-
19 ant Secretary of Commerce for Trade Promotion and the
20 Director General of the Foreign Commercial Service, shall
21 establish a system that informs members of the United
22 States business community and United States investors
23 prior to their entry into a foreign country of the business
24 and investment conditions in such country.

1 (b) WARNINGS.—The system established under sub-
2 section (a) shall, if appropriate, issue investment warn-
3 ings—

4 (1) to describe long-term, protracted conditions
5 that make a country's business or investment cli-
6 mate risky or potentially dangerous to members of
7 the United States business community and United
8 States investors; or

9 (2) when the ability of the United States Gov-
10 ernment to assist such members and investors is
11 constrained due to the closure of a United States
12 diplomatic or consular mission in such country.

13 (c) FOUR-TIER SYSTEM.—

14 (1) IN GENERAL.—The Secretary of State and
15 the Secretary of Commerce shall develop a four-tier
16 system to grade the business and investment climate
17 of each country that receives over \$5,000,000,000 in
18 exports, aid, and remittances from the United
19 States, based on the following criteria:

20 (A) Political stability.

21 (B) Macroeconomic stability.

22 (C) Rule of law.

23 (D) Corruption and transparency.

24 (E) Regulatory quality.

25 (F) Good governance.

1 (G) Civil society engagement.

2 (2) ADDITIONAL CRITERIA.—The grading with-
3 in the four-tier system referred to in paragraph (1)
4 shall also address the following unfair business and
5 investment practices with respect to each country
6 identified and graded under such paragraph:

7 (A) Discriminatory treatment of United
8 States citizens and businesses engaged in busi-
9 ness or investment activities.

10 (B) The status of allowing United States
11 goods to enter each such country without re-
12 quiring a co-production agreement.

13 (C) Protection of United States intellectual
14 property rights.

15 (d) PUBLIC ACCESSIBILITY.—The Secretary of State
16 shall publish on the website of the Department of State
17 information on countries under this section.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) CIVIL SOCIETY ENGAGEMENT.—The term
21 “civil society engagement” means the extent to
22 which individuals exercise peacefully their rights of
23 expression, association, and assembly, including
24 through their establishing and participating in non-

1 governmental organizations, unions, and other civil
2 society organizations.

3 (2) CORRUPTION AND TRANSPARENCY.—The
4 term “corruption and transparency” means the ex-
5 tent to which public officials seek illegitimate per-
6 sonal gain, including through bribery, extortion,
7 graft, nepotism, or embezzlement.

8 (3) CO-PRODUCTION AGREEMENT.—The term
9 “co-production agreement” means a United States
10 Government or United States business working with
11 a foreign government, foreign company, or an inter-
12 national organization to produce or manufacture an
13 item.

14 (4) GOOD GOVERNANCE.—The term “good gov-
15 ernance” means the extent to which institutions are
16 sustainable and democratic, with responsive, profes-
17 sional civil services providing high quality public
18 services.

19 (5) MACROECONOMIC STABILITY.—The term
20 “macroeconomic stability” means the extent to
21 which the economy of a foreign country is vulnerable
22 to internal and external shocks.

23 (6) POLITICAL STABILITY.—The term “political
24 stability” means the likelihood that the government

1 of a foreign country will be destabilized or over-
2 thrown by unconstitutional or violent means.

3 (7) REGULATORY QUALITY.—The term “regu-
4 latory quality” means the extent to which the gov-
5 ernment of a foreign country is able to formulate
6 and implement sound policies and regulations that
7 permit and promote private sector development.

8 (8) RULE OF LAW.—The term “rule of law”
9 means the extent to which laws of a foreign country
10 are publicly promulgated, equally enforced, inde-
11 pendently adjudicated, and are consistent with inter-
12 national norms and standards.

13 (9) UNFAIR BUSINESS AND INVESTMENT PRAC-
14 TICES.—The term “unfair business and investment
15 practices” includes any of the following:

16 (A) Unlawful actions under international
17 law or the law of the foreign country taken by
18 the government of such country or by busi-
19 nesses, citizens, or other entities of such coun-
20 try that have resulted in lost assets, contracts,
21 or otherwise contributed to an inhospitable
22 business or investment climate.

23 (B) Discriminatory treatment of United
24 States businesses, whether wholly- or partially-
25 owned.

1 (C) Failure to protect intellectual property
2 rights.

3 (D) Requiring a co-production agreement
4 in order for goods from the United States to
5 enter a foreign country.

